



Building & Permit Services

REQUEST FOR NOISE VARIANCE FOR CAPSTONE HOUSING

FINDINGS AND DECISION

June 24, 2013

Decision

A variance from Section 6.750 of the Eugene Code to allow noise for concrete pours for the Capstone housing development to occur starting at 4:30 am (2-3 days a week from June 2013 until September 30, 2013) is **DENIED**. This decision is based on the information contained in the application, public testimony received, and these findings.

Applicants

- Steve Beins of Construction Enterprises Inc.,
325 Seaboard Lane, Suite 170, Franklin, Tennessee 37067 Phone: (615)-332-8880
- Kenny McGee of Construction Enterprises Inc.,
37 West 13th Avenue, Eugene, OR 97401 Phone: (256)-690-3471
- Catherine Hudson of Construction Enterprises Inc.,
37 West 13th Avenue, Eugene, OR 97401 Phone: (541)-344-1484

Request

The standard noise exemption for construction activities within the City of Eugene is from 7:00 a.m. to 7:00 p.m. The contractor for the Capstone housing development, Construction Enterprises, Inc., submitted a request for a noise variance to the City on June 7, 2013. This application was considered complete on June 10, 2013. The applicant's request is to allow noise for concrete pours to begin on the site at 4:30 am, 2 to 3 days a week (Monday through Friday) from June 2013 to September 30, 2013.

The Capstone housing development includes the construction of 375 apartments for student housing and two separate parking structures, one to include 7-levels and the other to include 8-levels of parking. The applicant states that the request for the noise variance is to facilitate the placement of elevated concrete slabs. The noise producing equipment associated with the work includes: concrete pumping trucks, concrete delivery trucks with back-up alarms, gasoline powered trowel machines, gasoline concrete vibrators, gasoline generators, and light plant facilities.

Background

The subject property includes 16 separate tax lots which are located between West 11th Avenue and West 13th Avenue and Willamette Street and Charnelton Street. The entire property is zoned C-3 Major Commercial with /TD Transit District overlay.

Public Notice

In accordance with Eugene Code Section 6.755(2)(b), the City mailed written notice to owners and occupants within 300 feet of the sound source on June 10, 2013. Eleven public notices were posted on or near the subject property on June 10, 2013. A copy of the notice was also sent to the Downtown Neighbors Association.

The notices stated that any person wishing to provide testimony should submit comments in writing for consideration to: Katharine Kappa at the City of Eugene by 5:00 p.m. on Thursday, June 20, 2013. The City received a total of 104 responses to this noise variance application. This total included: 34 phone calls, 69 emails, and one (1) letter which was delivered to City offices. One-hundred and two (102) of the responses received were in opposition to this request. Two (2) responses received were neither for nor against the proposal. Of this total number of responses received, 46 were from nearby residents and three (3) were from nearby businesses. A summary of this public testimony is included as "Attachment A" to these findings and, by this reference, incorporated herein.

Findings

The criterion considered in reviewing a variance request is found in section 6.755(2)(c)3.:

"The variance may be granted by the city manager when it appears that compliance with the standards from which the variance is sought will produce unnecessary hardship to the applicant without equal or greater benefit to the public or that the purposes of the noise disturbance provisions can be served without a strict application of the standards."

The noise disturbance provisions in the Eugene Code allow for a variance process to determine exceptions to the general standards which allow for construction noise to occur from 7:00 a.m. to 7:00 p.m., seven days week. The above criterion requires a finding that compliance with the standard hours for construction noise would produce unnecessary hardship to the applicant without equal or greater benefit to the public. Based on this application, Capstone has not made a case for the public benefit that would result from this noise variance. And, in fact, the city received comments from the public which would state otherwise. These comments are summarized as follows:

- Capstone's written statement suggests that the majority of their neighbors are commercial. Information submitted from the public testimony states otherwise. Olive Plaza has approximately 150 units, Willamette Plaza has approximately 100 units, the Florence Apartments has 52 units, and the Tate has 47 units. This represents several hundred people who live in the immediate area of Capstone who would be negatively affected by the granting of this noise variance

- The requested 4:30am start time would disrupt the peace of the neighborhood and interrupt sleep which is critical to the elderly residents of Olive Plaza and working people who live in the Florence Apartments and Willamette Plaza who need sleep to perform their jobs. Lack of sleep negatively affects mental and physical well being.
- Residents in the area deserve the right to sleep reasonable hours and not have their lives disrupted by developers who are already permitted to work 7:00 a.m. to 7:00 p.m., seven days a week
- Capstone has been given enough concessions by the City and the people of Eugene in the form of tax breaks, closure of a major downtown street (Olive Street) which impacts businesses and residents. The noise which occurs between 7:00 a.m. to 7:00 p.m. is excessive enough for residents. Please do not grant them more concessions
- The City should not grant a variance to a company who has ignored "Stop Work Orders" from City inspectors
- To grant this request would be placing Capstone's desire to meet a self-determined deadline ahead of the health and well-being of the neighborhood. We have noise ordinances for a good reason
- This request would not only create noise at 4:30am, it would also create excessive light which would need to be used by the contractor in order to work in the dark. This will also disrupt the neighbors' sleep
- Many people in the neighborhood (especially the closest residential building, the Florence Apartments) do not have air conditioning. On hot summer nights, most people will sleep with their windows open. The request for this noise variance to occur during the summer months is even more impactful to residents who will have open windows or be forced to swelter in the heat
- Please protect the neighbors' quality of life. This presents an undue hardship on the neighbors in the area

Lack of Evidence:

The applicant provides minimal information in their application addressing why there is an unnecessary hardship for them that would preclude them from complying with the standard construction hours of 7:00 a.m. to 7:00 p.m. A number of the public responses received to this request have suggested that warmer temperatures (heat) are not a reason why concrete does not properly set nearly as much as cooler temperatures are a factor. Information has been provided which suggests that there are techniques available to the contractor in order to assist with concrete pouring and curing, including, but not limited to, chilling the water and using additives to the mix. It was also presented that Capstone has already poured concrete for approximately 4-5 levels of one of their parking garages and built a number of the residential structures in Phase 1 without the need for a noise variance. In addition, Capstone's request for a noise variance is for a lengthy period of time (up to 3 days a week for over a 3 month period of time) and at a very early hour in the day (4:30am). The lengthy duration, number of days per week, and early morning hours would present extraordinary and excessive impacts to the nearby neighbors. In summary, the evidence provided by the applicant is not compelling with regard to the hardship that they would face by having to follow the City's existing noise ordinance. On the other hand, based on the public testimony received, the City finds that there is compelling evidence that it would be detrimental to the public to grant this noise variance.

Therefore, based on the information contained in the application, public testimony received and the findings in this decision, a variance from Section 6.750 of the Eugene Code to allow Capstone to pour concrete, starting at 4:30 am, 2 -3 days a week, Monday through Friday from June 2013 until September 30, 2013 is denied.

The action of the city manager in denying a noise variance may be appealed in the manner provided by Eugene Code Section 2.021. The decision may be appealed within 15 days after the date of notice of the action. The City Manager's decision will become effective when the appeal period has expired. In this case, any appeal must be received by **5 p.m. on July 8, 2013** at the City's Permit and Information Center at 99 W 10th Avenue. Appeal procedures and form are available at the City's Permit and Information Center. In accordance with Section 2.021 of the Eugene Code, the Eugene Hearings Official will consider any appeals of this decision.

If you have any questions you may contact Katharine Kappa at 541-682-5309 or katharine.h.kappa@ci.eugene.or.us.

Decision Date: June 24, 2013

Decision given by: Katharine Kappa, City Manager designee

Katharine Kappa, Land Use Supervisor

ATTACHMENT "A"

Capstone Noise Variance Public Comments (June 10-20, 2013)

Phone calls:

1. Oliver Thornton of 1313 Lincoln Street (Willamette Towers). He is vehemently opposed to the variance because it will not be good for his health as he loses sleep.
2. Barbara Goldberg of 1133 Olive Street (Olive Plaza). She is very upset about a 4:30am start time. Six am would be a better time. She is stressed and interrupted by the machinery already. It is affecting peoples' health. They work on Saturdays and Sundays. They currently start their machines closer to 6am. Most units don't have air conditioning so windows are open in the summer which makes the noise more impactful.
3. Susan Beals of 571 W. 13th Avenue. She is opposed to noise variance. They already hear a "tunnel of noise" all day long from 7am to 7pm. With peoples' windows open in the summer, the 4:30am start time would disrupt early morning quiet and sleep. She would be okay with a 6am start time.
4. Charlene Landing (no address info). She is opposed.
5. Woman (no name)---opposed (Capstone should put residents up in a hotel when they pour)
6. Thomas (no last name or address)---opposed. They already got handsome tax breaks, they should work within allowed hours.
7. Becky Stiles (resident of Eugene)---opposed
8. Shelly Karl (lives in The Tate)---opposed. We have already given Capstone enough money and given them Olive Street. This is too early to start.
9. Teresa Casagrande (a voter)---opposed
10. Willard Osborn (retired contractor for 40 years)---opposed
11. Molly Craig (resident of Springfield)---opposed. Residents should be allowed to get sleep over the money Capstone will make
12. Don (requested no last name, resident of Lane County)---opposed. Don said he has worked in construction in Lane County for over 20 years. He worked on Riverbend Hospital in Springfield and they didn't start work before 7 am. He said that along with noise of backup beepers and generators, there will be lots of lights so workers can see. He said that you can hear beepers from ¼ mile away.
13. Randall Herrick (lives at Olive Plaza)---opposed
14. Joyce Gall---opposed. Involved in Deerbrook hearing.
15. Robert Lundeen (saw article in RG)---opposed. He has worked in construction for all his life. He is 80 years old and he says that you don't need cool temperatures to pour concrete. He has seen it done in 110 degree weather.

16. Vince Loving (retired concrete foundation worker)---opposed. He says concrete is temperature sensitive, but only to the cold.
17. Jackson Kellogg (resident of Patterson Towers)---opposed
18. Rebecca Anthony (resident of Olive Plaza)---opposed
19. Russell Becker (lives on W. 15th Avenue near Lawrence St)---opposed. He wouldn't be surprised if he ends up hearing noise at 4:30am due to the quiet at that time and windows being open in the summer.
20. Dan Sobe---opposed. This would present an unnecessary burden on the neighbors and the community.
21. Woman (no name)---opposed. Ridiculous that Capstone requests a 4:30am start time after the tax breaks we gave them.
22. Sue Kachefsky---opposed.
23. Man (no name)---opposed
24. Woman (no name)---opposed
25. Aldeen Rubenstein---opposed
26. Joan Hageder (resident of Eugene)---opposed
27. Mark Agerter (owner of Eugene Toy and Hobby)---opposed
28. Pat Hoover---opposed
29. Woman (no name)---opposed. It is ridiculous to accommodate Capstone.
30. Ron Chubb (resident of Springfield)---opposed. Not fair to nearby residents.
31. Fay Berkeley (resident of Olive Plaza)---opposed
32. Camilla Pratt of 120 Westbrook Way in Eugene---opposed. Noise variance is totally inappropriate.
33. Woman (no name)---opposed
34. Corey Taggart---opposed

Emails (opposed):

1. Tom Happy (Vice Chair of Jefferson Westside Neighbors)---opposed.
2. Barbara Valk (owner of Willamette Towers)---opposed. Most of buildings and homes in area don't have A/C and with windows open in the summer, it will be very noisy in early mornings.
3. David Lottier of 1313 Lincoln Street---opposed. (3 emails received)
4. Robert Kreiss---opposed.
5. Kevin Biersdorff---opposed.
6. Annette Gudjian of PO Box 50083 Eugene, OR---opposed.
7. Susan Connolly of 1313 Lincoln Street #1302---opposed.
8. Benton Elliott of 1313 Lincoln Street #605---opposed.
9. Laura Romeyn of 1313 Lincoln Street #708---opposed.
10. Paul Slate---opposed.
11. Carol Turner (owner of Florence Apts at 1272 Willamette St)---opposed.
12. Brian Kester (Bell Real Estate and manager of apt bldg. at 1272 Willamette St)---opposed.

1. Mary Ann Roberts of 1272 Willamette St #101---opposed.
2. Bruce Pederson (lives on Charnelton between 11th and 12th Avenues)---opposed.
3. Paula Rogers (lives in Willamette Towers)---opposed.
4. Jacob Mockbee of 1272 Willamette St #307---opposed.
5. Gregory Liggett of 1272 Willamette St #401---opposed (says he will file an appeal if approved)
6. Britt Bowen of 1272 Willamette Street---opposed
7. Brenton Gicker of 1313 Lincoln Street #1207---opposed
8. Raven Carpenito (resident of The Florence Apts)---opposed
9. Trevor Sustaire (of The Florence Apts)---opposed
10. Brian Weaver---opposed
11. LaSalle---opposed
12. Mike Henage of 1272 Willamette St #305---opposed
13. Robin Bernardi of 1272 Willamette St---opposed (once a week if you must)
14. William Randall (Arbor South Architecture)---opposed
15. Patrick Westerberg of 1272 Willamette St---opposed
16. Douglas Beauchamp of 1313 Lincoln St---opposed
17. Marti Gerdes of 4420 Fox Hollow Road---opposed (not a nearby neighbor)
18. Bonnie Lindberg (of Broadway Place Apts)---opposed
19. Fred Tepfer---opposed
20. Kris Ward---opposed (read article in RG)
21. Phyllis MacLuan---opposed
22. Robert Haskett, Ph.D. of 2085 University St.---opposed
23. Lauren Belland of 1272 Willamette St #102---opposed
24. Douglas Hintzman of 1375 Olive Street #410---opposed
25. Janet Gicker of 1313 Lincoln Street---opposed
26. Kate Bollons (no address)---opposed
27. Rene Salm of 1313 Lincoln Street # 503---opposed
28. Mark L. Gillem, PhD, AIA, AICP (UO Professor)---opposed. He provided detailed information on the curing temperatures for concrete.
29. Graham Lewis of 2363 Pershing---opposed
30. Tyler Twombly (Florence Apts resident)---opposed
31. Tammy---opposed
32. Amy E. Telfer---opposed
33. Charlie Boardman of 3550 Kevington, Eugene---opposed.
34. Stuart Greenleaf (acupuncturist), Arthur Ticknor (chiropractor), and Rick Schwartz (chiropractor) with a business address of 1245 Charnelton Street---opposed. Presented a list of 5 construction practices that would like to have followed due to impacts on their business and clients.
35. City Councilor George Brown---opposed. He provided information from Eugene Sand & Gravel that an additive can be used to help concrete cure safely during increased summer temperatures (for minimal extra cost).
36. Mayor Kitty Piercy---opposed. "To do otherwise makes no sense whatsoever"
37. Kim Holloway (resident of Willamette Towers)---opposed

13. Jesse Woodmansee of 1272 Willamette Street---opposed
14. Susan Stewart (Eugene)---opposed
15. Jeanne-Marie Moore of 1313 Lincoln Street---opposed.
16. City Councilor Betty Taylor---opposed. "It would be unconscionable to grant their request"
17. Rene Kane of 254 West 14th Avenue---opposed. Insufficient sleep has documented negative health effects. Capstone neighbors should not have to bear this impact so the company can save money.
18. Scott Landfield (Tsunami Books)---opposed
19. Eric Ostlind of 1272 Willamette Street---opposed
20. Dennis Casady---opposed
21. Morgan Reiter (Eugene)---opposed
22. George Jobanek---opposed
23. Dustin Locke (resident of downtown Eugene)---opposed
24. Andy Staple (a downtown resident near Capstone)---opposed
25. Jason (no last name given)---opposed
26. Charlie Collier (works at 199 W. 8th Avenue, Suite 3 and lives at W11th and Almaden)---opposed
27. Esther Erford of 1313 Lincoln Street #1002---opposed
28. T. Aisha Edwards, LPC of 1272 Willamette Street---opposed
29. Elaine Weiss of 2091 Friendly Street (owner of a duplex that she rents at 228/236 W. 12th Avenue).
---opposed. Concerned about her tenants quality of life.
30. Thomas Britton---opposed

Emails (neutral):

1. Jean Tate (resident of The Tate). She indicated that a 5 AM start time would be more reasonable as well as working until 8 PM. She also added that once the morning commute starts about 7:30am, the concrete trucks have more difficulty navigating to be in line to keep the pump moving the concrete into forms.
2. Arthur Noxon of 3609 County Farm Road, Eugene. He is an acoustical engineer for nearly 30 years in Eugene. If we have questions, or anyone needs assistance, let him know.

Letters:

1. Luther Greulich of 1313 Lincoln Street #203---opposed. Provided detailed testimony on concrete , applicant's statement, and noise ordinance.